

**FILED**

# BOARD OF PHARMACY

1. Respondent is a pharmacist in the State of New Jersey and has been a licensee at all times relevant hereto.

2. On September 28, 2004 respondent was convicted of a one count felony superseding Indictment which charged Conspiracy to Defraud the United States, to unlawfully buy and sell prescription drug samples, and to misbrand prescription drugs in violation of 18 U.S.C. § 371, in the United States District Court, District of New Jersey. Specifically, respondent, in or about the Fall of 2003, purchased prescription drug samples that had been misbranded and adulterated from an individual in Union County, New Jersey. (See Plea Agreement in a Criminal Case attached hereto as Exhibit A.)

3. The following sentence was ordered; probation for three years, and a fine of \$10,000.00. (See Judgment in a Criminal Case attached hereto as Exhibit B.)

#### **CONCLUSIONS OF LAW**

1. The above-described conduct provides grounds for the suspension or revocation of respondent's license to practice pharmacy in New Jersey pursuant to N.J.S.A. 45:1-21(f) in that the crime of which respondent was convicted is one of moral turpitude and/or relates adversely to the practice of pharmacy.

**IT IS THEREFORE on this 20<sup>th</sup> day of July , 2005,**

**ORDERED that:**

1. Respondent's license to practice pharmacy and his right to be a permit holder in the State of New Jersey be and hereby are provisionally revoked.

2. The within Order shall be subject to finalization by the Board at 5:00 p.m. on the 30<sup>th</sup> business day following entry hereof unless respondent requests a modification or dismissal of the above stated Findings of Fact or Conclusions of Law by:

a. Submitting a written request for modification or dismissal to Joanne Boyer, Executive Director, State Board of Pharmacy, 124 Halsey Street, Sixth Floor, Newark, New Jersey 07101.

b. Setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed.

c. Submitting any and all documents or other written evidence supporting respondent's request for consideration, and reasons therefor.

3. Any submissions will be reviewed by the Board, and the Board will thereafter determine whether further proceedings are necessary. If no material discrepancies are raised through the submission by respondent during the thirty-day period, or if the Board is not persuaded that the submitted materials merit further consideration or mitigation of the penalties set forth herein a Final Order of Discipline will be entered.

4. In the event that respondent's submissions establish a need for further proceedings, including, but not limited to, an evidentiary hearing, respondent shall be notified with regard thereto. In the event that an evidentiary hearing is ordered, the preliminary findings of fact and conclusions of law contained herein shall serve as notice of the factual and legal allegation in such

proceeding. However, the Board shall not be limited to the sanctions herein and may recoup costs to the State.

NEW JERSEY STATE BOARD OF PHARMACY

By: Edward H. McHale, R.P.  
~~Pamela Allen, R.P.~~  
Board President  
V.  
Vice



*United States Attorney  
District of New Jersey*

970 Broad Street, Suite 700  
Newark, NJ 07102

973/645-2700

[JWD] / COOP. PLG  
[2003R01799]

April 19, 2004

04-56 (FSH)

Kevin Marino, Esq.  
One Newark Center  
Newark, NJ 07102

Re: Plea Agreement with Narendra Dalal

Dear Mr. Marino:

This letter sets forth the full and complete agreement between your client, Narendra Dalal, and the United States Attorney for the District of New Jersey ("this Office").

Charge

Conditioned on the understandings specified below, this Office will accept a guilty plea from Narendra Dalal to a one-count felony Superseding Indictment, No. 04-56 (FSH), filed on February 27, 2004, which charges conspiracy to defraud the United States, to unlawfully buy and sell prescription drug samples, and to misbrand prescription drugs, in violation of 18 U.S.C. § 371. If Narendra Dalal enters a guilty plea and is sentenced on this charge, and otherwise fully complies with all of the terms of this agreement, this Office will not initiate any further criminal charges against Narendra Dalal for conspiring to buy, sell and misbrand prescription drugs, or for buying, selling and misbranding prescription drugs between 2001 and 2003, as described more fully in the Indictment. The scope of the protection offered in the preceding sentence is further limited to the criminal activity that Narendra Dalal has revealed to this Office as of the date of this agreement. However, in the event that the judgment of conviction entered as a result of this guilty plea does not remain in full force and effect, any dismissed charges and any other charges that are not time-barred by the applicable statute of limitations on the date this agreement is signed by Narendra Dalal may be commenced against him, notwithstanding the expiration of the limitations period after Narendra Dalal signs the agreement. Narendra Dalal agrees to waive any statute of limitations with respect to any crime that would otherwise expire after Narendra Dalal signs the

agreement.

Cooperation

Narendra Dalal shall cooperate fully with this Office. As part of that obligation, Narendra Dalal shall truthfully disclose all information concerning all matters about which this Office and other Government agencies designated by this Office may inquire and shall not commit or attempt to commit any additional crimes. Narendra Dalal also agrees to be available at all reasonable times requested by representatives of the Government and shall truthfully testify in all proceedings, including grand jury and trial proceedings, as to any subject about which he is questioned. Furthermore, Narendra Dalal agrees to provide to this Office, upon request, all documents and other materials relating to matters about which this Office inquires. If as part of this obligation to cooperate, Narendra Dalal provides self-incriminating statements, the statements shall be subject to the protections, terms, and conditions set forth in U.S.S.G. § 1B1.8 (a) & (b). Nothing, however, shall prevent the use of such statements in a prosecution for false statements, perjury, or obstruction of justice or prevent the derivative use of such statements.

The determination whether Narendra Dalal has fully complied with this agreement and provided substantial assistance to the Government rests solely in the discretion of this Office. If this Office determines in its sole discretion that Narendra Dalal has fully complied with this agreement and has provided substantial assistance in the investigation or prosecution of one or more persons who have committed offenses, this Office will move the sentencing judge, pursuant to Section 5K1.1 of the Sentencing Guidelines, to depart from the otherwise applicable guideline range. Whether the sentencing judge does in fact impose a sentence below the otherwise applicable guideline range or statutory minimum sentence is a matter committed solely to the discretion of the sentencing judge. Narendra Dalal may not withdraw his plea if this Office determines that Narendra Dalal has not rendered substantial assistance or has not fully complied with the terms of this agreement, or if the Court refuses to grant in whole or in part the Government's motion for a downward departure.

Should Narendra Dalal withdraw from this agreement, or commit or attempt to commit any additional federal, state, or local crimes, or intentionally give materially false, incomplete, or misleading testimony or information, or otherwise violate any provision of this agreement, this Office will be released from

its obligations under this agreement, including any obligation to file a motion under U.S.S.G. § 5K1.1, but Narendra Dalal may not withdraw the guilty plea entered into pursuant to this agreement. In addition, Narendra Dalal shall thereafter be subject to prosecution for any federal criminal violation of which this Office has knowledge, including, but not limited to, perjury and obstruction of justice. Any such prosecution may be premised upon any information provided, or statements made, by Narendra Dalal, and all such information, statements, and leads therefrom may be used against Narendra Dalal. Any such prosecution that is not time-barred by the applicable statute of limitations on the date this agreement is signed by Narendra Dalal may be commenced, notwithstanding the expiration of the limitations period after Narendra Dalal signs the agreement. Narendra Dalal agrees to waive any statute of limitations with respect to any crime that would otherwise expire after Narendra Dalal signs the agreement. With respect to any prosecution referred to in this agreement, Narendra Dalal further waives any right to claim that statements made by him before or after the execution of this agreement, including any statements made pursuant to any prior agreement between Narendra Dalal and this Office, or any leads from Narendra Dalal's statements, should be suppressed under that prior agreement or under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), U.S.S.G. § 1B1.8, or otherwise.

#### Sentencing

The violation of 18 U.S.C. § 371 to which Narendra Dalal agrees to plead guilty carries:

- (1) a statutory maximum prison sentence of five years;  
and
- (2) a statutory maximum fine equal to the greatest of:
  - (a) \$250,000;
  - (b) twice the gross amount of any pecuniary gain that any persons derived from the offense; or
  - (c) twice the gross amount of any pecuniary loss sustained by any victims of the offense.

The sentence to be imposed upon Narendra Dalal is within the sole discretion of the sentencing judge, subject to the provisions of the Sentencing Reform Act, 18 U.S.C. § 3551-3742 and the United States Sentencing Guidelines. The sentencing judge may impose the maximum term of imprisonment and maximum

fine that are consistent with the Sentencing Reform Act and the Sentencing Guidelines, up to and including the statutory maximum term of imprisonment and the maximum statutory fine. The United States Sentencing Guidelines may impose a minimum term of imprisonment and/or fine, and may authorize departure from the minimum and maximum penalties under certain circumstances. This Office cannot and does not make any representation or promise as to what guideline range will be found applicable to Narendra Dalal, or as to what sentence Narendra Dalal ultimately will receive.

Further, in addition to imposing any other penalty on Narendra Dalal, the sentencing judge:

(1) will order Narendra Dalal to pay an assessment of \$100 pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing;

(2) shall order Narendra Dalal to pay restitution pursuant to 18 U.S.C. § 3663 et seq.;

(3) may order Narendra Dalal, pursuant to 18 U.S.C. § 3555, to give notice to any victims of his offense;

(4) pursuant to 18 U.S.C. § 3583 and Section 5D1.2 of the Sentencing Guidelines, may require Narendra Dalal to serve a term of supervised release of at least two years and up to three years, which will begin at the expiration of any term of imprisonment imposed. Should Narendra Dalal be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, Narendra Dalal may be sentenced to not more than two years' imprisonment in addition to any prison term previously imposed, regardless of the statutory maximum term of imprisonment set forth above and without credit for time previously served on post-release supervision, and may be sentenced to an additional term of supervised release.

#### Rights of this Office Regarding Sentencing

Except as otherwise provided in this agreement, this Office reserves its right to take any position with respect to the appropriate sentence to be imposed on Narendra Dalal by the sentencing judge, to correct any misstatements relating to the sentencing proceedings, and to provide the sentencing judge and the United States Probation Office all law and information



relevant to sentencing, favorable or otherwise, including information provided by Narendra Dalal before and after signing this agreement and protected by U.S.S.G. 1B1.8. In addition, this Office may inform the sentencing judge and the United States Probation Office of: (1) this agreement; (2) the full nature and extent of Narendra Dalal's activities and relevant conduct with respect to this case; and (3) the full nature and extent of Narendra Dalal's cooperation with this Office and when such cooperation commenced.

#### Stipulations

This Office and Narendra Dalal agree to stipulate at sentencing to the statements set forth in the attached Schedule A, which hereby is made a part of this plea agreement. This agreement to stipulate, however, cannot and does not bind the sentencing judge, who may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence. Moreover, this agreement to stipulate on the part of this Office is based on the information and evidence that this Office possesses as of the date of this agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, this Office shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either this Office or Narendra Dalal from any other portion of this agreement, including any other stipulation. If the sentencing court rejects a stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the sentencing court was within its discretion and authority to do so. These stipulations do not restrict the Government's right to respond to questions from the Court and to correct misinformation that has been provided to the Court.

#### Appeal and Post-Sentencing Rights

As set forth in Schedule A, this Office and Narendra Dalal waive certain rights to file an appeal, collateral attack, writ, or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255. Otherwise, this Office specifically reserves the right to file, oppose, or take any position in any appeal, collateral attack, or proceeding involving post-sentencing motions or writs.

Other Provisions

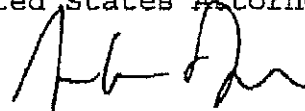
This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement and Narendra Dalal's cooperation to the attention of other prosecuting offices, if requested to do so. If the government in its sole discretion determines that Narendra Dalal has provided substantial assistance and makes a motion under Section 5K1.1, the government will make its Section 5K1.1 letter memorandum available to the Board of Pharmacy of the State of New Jersey.

This agreement was reached without regard to any civil or administrative matters that may be pending or commenced in the future against Narendra Dalal. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue Service), or the Board of Pharmacy of the State of New Jersey, or any third party from initiating or prosecuting any civil or administrative proceeding against Narendra Dalal.

This agreement constitutes the full and complete agreement between Narendra Dalal and this Office and supersedes any previous agreement between them. No additional promises, agreements, or conditions have been entered into other than those set forth in this letter, and none will be entered into unless in writing and signed by the parties.


Very truly yours,

CHRISTOPHER J. CHRISTIE  
United States Attorney



By: JOSHUA DREW  
Assistant U.S. Attorney

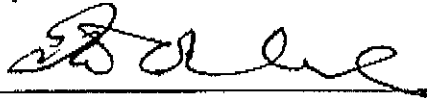
APPROVED:



ROBERT M. HANNA, Assistant U.S. Attorney  
Acting Chief, Securities & Health Care Fraud Unit

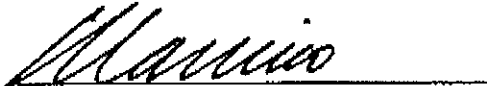
I have received this letter from my attorney, Kevin Marino, Esq., I have read it, and I understand it fully. I hereby accept the terms and conditions set forth in this letter and acknowledge that it constitutes the full agreement between the parties. There have been no additional promises or representations made to me by any officials or employees of the United States Government or by my attorney in connection with this matter.

AGREED AND ACCEPTED:



Narendra Dalal

Date: 4/22/04



Kevin Marino, Esq.

Date: 4/22/04

Plea Agreement With Narendra Dalal

Schedule A

This Office and Narendra Dalal agree to stipulate at sentencing to the statements set forth below, subject to the conditions in the attached plea agreement.

1. The 2003 Sentencing Guidelines Manual is applicable to Dalal's sentencing. The applicable guideline is § 2N2.1. This guideline carries a Base Offense Level of 6.

2. Because the conspiracy as charged in the Superseding Indictment, No. 04-56, involved fraud, § 2N2.1(b)(1) applies, requiring cross reference to § 2B1.1.

3. The loss amount attributable to Dalal from the offense conduct was at least greater than \$120,000 and less than \$200,000.

4. Dalal had neither an aggravating role nor a mitigating role in the offense, and therefore no adjustment pursuant to either § 3B1.1 or § 3B1.2 is appropriate.

5. Dalal abused a position of trust in a manner that significantly facilitated the commission of the relevant criminal activity. This results in an increase of 2 levels, pursuant to § 3B1.3.

6. As of the date of this letter, Dalal has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the offense charged. Therefore, a downward adjustment of 2 levels for acceptance of responsibility is appropriate under § 3E1.1(a) if Dalal's acceptance of responsibility continues through the date of sentencing.

7. The parties agree that there is no basis for any upward or downward departure or any upward or downward adjustment not set forth herein. Accordingly, neither party will seek or argue for any departure not set forth herein.

8. Dalal knows that he has, and voluntarily waives, the right to file any appeal, any collateral attack, or any other writ or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, which challenges the sentencing court's determination or imposition of the offense level, if the total offense level determined by the court is equal to or less than 16. The United States will not file any appeal, motion, or writ that challenges

the sentencing court's determination or imposition of the offense level, if the total offense level determined by the court is equal to or greater than 16. The provisions of this paragraph are binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, if the sentencing court accepts a stipulation, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so. To the extent that any appeal, collateral attack, writ, or motion is barred by this paragraph, the parties agree that it should be dismissed.

9. Both parties reserve the right to oppose or move to dismiss any appeal, collateral attack, writ, or motion barred by the preceding paragraph and to file or to oppose any appeal, collateral attack, writ or motion not barred by the preceding paragraph.

Certified as a true copy on

Title Date: 5-11-05

By M. ORAYTON

( ) Clerk  
( ) Deputy

UNITED STATES DISTRICT COURT  
District of New Jersey

RECEIVED  
CLERK'S OFFICE

2004 OCT -1 P 1:26

UNITED STATES OF AMERICA

v.

Case Number 04-00056-001 UNITED STATES

NARENDRA DALAL

Defendant.

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

The defendant, NARENDRA DALAL, was represented by Kevin H. Marino, Esq.

The defendant pled guilty to count 1 of the Superseding Indictment on April 22, 2004. Accordingly, the court has adjudicated that the defendant is guilty of the following offense:


<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date of Offense</u>	<u>Count Number(s)</u>
18:371	Conspiracy to Defraud the United States, to Unlawfully Buy and Sell Prescription Drug Samples, and to Misbrand Prescription Drugs	October 2003	1

As pronounced on September 27, 2004, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and U.S.S.G. § 5K1.1.

It is ordered that the defendant shall pay to the United States a special assessment of \$100.00, for count 1, which shall be due immediately. Said special assessment shall be made payable to the Clerk, U.S. District Court.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this the 28<sup>th</sup> day of September, 2004.

  
\_\_\_\_\_  
FAITH S. HOCHBERG  
United States District Judge

Certified as a true copy on  
This Date: 5-11-05  
By: M. O'Keefe  
( ) Clerk  
(x) Deputy

Defendant: NARENDRA DALAL  
Case Number: 04-00056-001

**PROBATION**

The defendant is hereby placed on probation for a term of 3 years.

While on probation, the defendant shall comply with the standard conditions that have been adopted by this court (set forth below):

Based on information presented, the defendant is excused from the mandatory drug testing provision, however, may be requested to submit to drug testing during the period of probation if the probation officer determines a risk of substance abuse.

If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution and shall comply with the following special conditions:

The defendant shall provide the U.S. Probation Office with full disclosure of his financial records to include yearly income tax returns upon the request of the U.S. Probation Office. The defendant shall cooperate with the probation officer in the investigation of his financial dealings and shall provide truthful monthly statements of his income.

The defendant is prohibited from incurring any new credit charges or opening additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with a payment schedule for any fine obligation. The defendant shall not encumber or liquidate interest in any assets unless it is in direct service of the fine obligation or otherwise has the express approval of the Court.

Defendant: NARENDRA DALAL  
Case Number: 04-00056-001

### STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this Judgment:

- 1) The defendant shall not commit another federal, state, or local crime during the term of supervision.
- 2) The defendant shall not illegally possess a controlled substance.
- 3) If convicted of a felony offense, the defendant shall not possess a firearm or destructive device.
- 4) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 5) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 6) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 7) The defendant shall support his or her dependents and meet other family responsibilities.
- 8) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 9) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 10) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances.
- 11) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 12) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 13) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 14) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 15) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 16) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

*For Official Use Only - - U.S. Probation Office*

Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision or (2) extend the term of supervision and/or modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions, and have been provided a copy of them.

You shall carry out all rules, in addition to the above, as prescribed by the Chief U.S. Probation Officer, or any of his associate Probation Officers.

(Signed) \_\_\_\_\_  
Defendant Date

\_\_\_\_\_  
U.S. Probation Officer/Designated Witness Date



Defendant: NARENDRA DALAL  
Case Number: 04-00056-001

**FINE**

The defendant shall pay a fine of \$10,000.

This fine, plus any interest pursuant to 18 U.S.C. § 3612(f)(1), is due immediately and shall be paid in monthly installments of no less than \$300, to commence 30 days after the date of this judgment.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

MINUTES OF PROCEEDINGS

NEWARK

Date: September 27, 2004

JUDGE: HON. FAITH S. HOCHBERG

COURT REPORTER: JOHN STONE

DEPUTY CLERK: LAWRENCE MACSTRAVIC

Title of Case: U.S.A. v. NARENDRA DALAL

Docket# Cr. 04-56 (FSH)

Appearances: Joshua Drew, AUSA  
Kevin H. Marino, Esq., for defendant

Defendant present.

Government's motion pursuant to U.S.S.G. § 5K1.1 granted.

Sentence

Probation for 3 years on Count 1 of the Superseding Indictment.

Special conditions:

1. Deft. shall provide USPO with full disclosure of his financial records including yearly income tax etc.
2. Deft. is prohibited from incurring any new credit charges or opening additional lines of credit etc.

Special assessment of \$100. is due immediately.

Fine of \$10,000. is due immediately.

Certified as a true copy on  
This Date: 5-11-05  
By M. O'Leary  
( ) Clerk  
( ) Deputy

Adjourned to: \_\_\_\_\_ Time commenced: 2:15p.m. Time adjourned: 2:35p.m.

cc: chambers

/s/ Lawrence MacStravic  
Deputy Clerk

CLERK'S OFFICE